

Internal Revenue Service

Department of the Treasury
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Date:
November 04, 2009

LEGEND

Parent =

Subsidiary =

Corp 1 =

Corp 2 =

Date A =

Company Official =

Dear _____ :

This letter responds to letters dated June 30, 2009, August 3, 2009, August 25, 2009 and September 25, 2009 submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file an election under § 1.1502-20(i)(4) of the Income Tax Regulations to apply the provisions described in § 1.1502-20(i)(2)(ii), i.e., § 1.337(d)-2, to determine Corp 2's basis adjustment in its Subsidiary stock in connection with Subsidiary's deconsolidation from the Parent consolidated group on Date A (the "Election"). The material information is summarized below.

Parent is the common parent of a consolidated group. Corp 1 and Corp 2 are members of Parent's consolidated group. Immediately prior to Date A, Corp 1 and Corp 2 owned all the stock of Subsidiary. Subsidiary was a member of Parent's consolidated group until Date A, on which date Subsidiary issued shares of its stock to the public in an IPO, deconsolidating Subsidiary.

An election under § 1.1502-20(i)(4) to determine the amount of the basis reduction upon the deconsolidation of Subsidiary was required to be filed with or as part of Parent's consolidated group's income tax return for the taxable year that included August 26, 2004. However, for various reasons, the Election was not filed. Subsequently it was discovered that a valid election was not filed. Accordingly, this request was submitted, under § 301.9100-3, for an extension of time to file a valid election.

Section 1.1502-20(i)(2) provides, in relevant part, that in the case of a disposition or deconsolidation of stock of a subsidiary by a member before March 7, 2002, a consolidated group may determine the amount of the member's allowable loss or basis reduction by making an irrevocable election to determine which of the authorized provisions it uses in determining its loss disallowance and basis reduction. The regulations permit the taxpayer to apply the provisions of § 1.337(d)-2.

Section 1.1502-20(i)(4) provides, in relevant part, that the election in § 1.1502-20(i)(2)(ii) must be made by including the statement required under § 1.1502-20(i)(4) with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004, is due (including any extensions). Filing a statement under § 1.1502-20(i)(4) satisfies the requirement to file a "statement of allowed loss" otherwise imposed.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than

six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-20(i)(4)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election with respect to the deconsolidation of Subsidiary from Parent's consolidated group, as described above.

The above extension of time is conditioned on Parent's consolidated group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely filed (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election

late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayer. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: